



Billing code 6051-01-P

## **PEACE CORPS**

### **22 CFR Part 303**

#### **RIN 0420-AA29**

Freedom of Information Act Administration

**AGENCY:** Peace Corps.

**ACTION:** Final rule.

**SUMMARY:** The final rule updates Peace Corps regulations on the Freedom of Information Act (FOIA) to implement guidance given by the President and the Attorney General regarding discretionary disclosures of records or information exempt from disclosure under the FOIA, whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. The final rule is based on language used by Department of Justice in its FOIA regulations. The Peace Corps received comments from the National Archives and Records Administration's Office of Government Information Services (OGIS).

**DATES:** This final rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Anne Hughes, Office of the General Counsel, Policy and Program Analyst, 1111 20th Street NW, Washington, DC 20526, and 202-692-2164.

**SUPPLEMENTARY INFORMATION:** The revisions to the Peace Corps' Freedom of Information Act ("FOIA") regulations would incorporate the disclosure principles contained in President Obama's January 21, 2009 Memorandum regarding FOIA, the Attorney General's FOIA Guidelines to Favor Disclosure and Transparency dated March 19, 2009, and the Guide to

the Freedom of Information Act promulgated by the Department of Justice's Office of Information Policy. The final rule deletes unnecessary and superfluous language and ensures the rule is consistent with current law. The final rule inserts additional contact information for the filing of initial FOIA requests; inserts additional contact information for the filing of administrative appeals; and adds two FOIA exemptions: 5 U.S.C. 552(b)8, Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and (b)9, Geological and geophysical information and data, including maps, concerning wells. The Peace Corps FOIA regulations were last revised May 14, 2007 (72 FR 27055).

#### **Summary of comments.**

The proposed rule was published for comments (78 FR 48083, August 7, 2013). The comment period closed September 6, 2013. The Peace Corps received comments about the proposed rule from the National Archives and Records Administration's Office of Government Information Services (OGIS) dated September 5, 2013. In general, OGIS commended the Peace Corps for updating its FOIA policies and procedures to reflect discretionary disclosure and to ensure consistency with current law. In accordance with its statutory mandate under FOIA, OGIS reviewed and commented on the Peace Corps' proposed changes to the rule and other sections of the existing rule. The Peace Corps addresses OGIS' comments on the proposed rule in more detail in the following section.

#### **Analysis of Comments.**

##### **§ 303.2 Definitions.**

Comment: Suggested the Peace Corps consider adding several terms, including requester category and fee waiver, to the glossary.

Response: The Peace Corps has added the terms as suggested.

### **§ 303.3 Policy.**

Comment: Suggested a minor edit in the interest of clarity as noted in italics in the following sentence: “As a matter of policy, the Peace Corps makes discretionary disclosures of records or information *that may be* exempt from disclosure under FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.”

Response: The Peace Corps made the suggested change.

### **§ 303.6 Procedures for use of public reading room.**

Comment: Suggested adding clarifying language to this section so as not to inadvertently indicate that FOIA requests may be made by telephone. Specifically, suggests the following change, noted in italics: “Persons submitting a request by telephone *for a record in the public reading room* will be notified whether a written request would be advisable to aid in the identification and expeditious processing of the records sought.”

Response: The Peace Corps made the suggested change.

### **§ 303.8 Requests for records.**

Comment: Regarding subsection (b), suggested changing “shall be clearly marked ‘Freedom of Information Act request’” to “*should* be clearly marked ‘Freedom of Information Act request.’”

Response: The Peace Corps made the suggested change.

Comment: Regarding subsection (h), suggested the Peace Corps provide requesters with an individualized tracking number and a brief description of the subject of the request.

Response: The Peace Corps provides an individualized tracking number to each requester and uses brief descriptions when appropriate. We will update the rule to reflect this.

### **§ 303.9 Exemptions for withholding records.**

Comment: Regarding subsection (b), recommends the Peace Corps more fully address the requirements in 5 U.S.C. 552 § (b) that agencies shall (1) indicate, if technically feasible, the *precise* amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion is made, and (2) indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption.

Response: The Peace Corps concluded this comment does not require our comment. We add the word “precise” as suggested.

### **§ 303.10 Responsibilities and authorities.**

Comment: Suggests that the agency also provide requesters with a point of contact within the receiving agency to whom the requester can speak regarding the referral.

Response: The Peace Corps has incorporated OGIS’ suggestion in this section.

### **§ 303.12 Appeals.**

Comment: Subsection (a), suggest the Peace Corps allow 30 or even 45 or 60 days for requesters to appeal. OGIS has observed that mail screening by Federal agencies may slow the amount of

time it takes appeals to reach their destination. Thirty to 60 day deadlines are in line with other Federal agencies.

Response: The Peace Corps will allow 30 days for requesters to appeal.

Comment: With regard to subsection (b), suggests that the Peace Corps add language in accordance with the 2007 amendments to FOIA (5 U.S.C. § 552 (h)), regarding OGIS and its services.

Response: Peace Corps has incorporated language regarding OGIS and its services as suggested.

### **§ 303.13 Fees.**

Comments: Regarding subsection (h), suggest providing requesters with an estimated amount of fees, including a breakdown of the fees for search, review and/or duplication. Also recommended that the Peace Corps allow documents to be released generally without any charge or at a reduced charge at its discretion and/or if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

Response: The Peace Corps concluded that the comment does not require a response or change to the final rule.

### **Preservation of records and records management (This not a section in current rule).**

Comment: Suggests agencies include information about the preservation of records and records management in its FOIA regulations.

Response: The Peace Corps concluded that such additional elaboration of a program objective would be duplicative of our current records management policy and unnecessary.

**Executive Order 12866**

This regulation has been determined to be non-significant within the meaning of Executive Order 12866.

**Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b))**

This regulatory action will not have a significant adverse impact on a substantial number of small entities.

**Unfunded Mandates Act of 1995 (Sec. 202, Pub. L. 104–4)**

This regulatory action does not contain a Federal mandate that will result in the expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of \$100 or more in any one year.

**Paperwork Reduction Act of 1995 (44 U.S.C., Chapter 35)**

This regulatory action will not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act.

**Federalism (Executive Order 13132)**

This regulatory action does not have Federalism implications, as set forth in Executive Order 13132. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

**List of Subjects in 22 CFR Part 303**

Administrative practice and procedure, Freedom of information.

For the reasons set out in the preamble, the Peace Corps proposes to amend 22 CFR part 303 as follows:

**PART 303—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE  
FREEDOM OF INFORMATION ACT**

1. The authority citation for part 303 continues to read as follows:

Authority: 5 U.S.C. 552; 22 U.S.C. 2501, et seq.; E.O. 12137, 44 FR 29023, 3 CFR, 1979 Comp., p. 389; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Amend § 303.2 by:

a. Redesignating paragraphs (d) through (g) as paragraphs (g) through (j), paragraph (h) as paragraph (l), and paragraph (i) as paragraph (m);

b. Adding new paragraphs (d), (e), and (f), and paragraphs (k) and (n); and

c. Revising newly redesignated paragraph (h).

The revisions read as follows:

**§ 303.2 Definitions.**

\* \* \* \* \*

(d) *Expedited processing* means the process set forth in the FOIA that allows requesters to ask for expedited processing of their FOIA request if they can demonstrate a compelling need.

(e) *Fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

(f) *FOIA Public Liaison* means an agency official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

\* \* \* \* \*

(h) *OIG records* means those records as defined generally in this section which originated with or are in the possession and control of the Office of Inspector General (OIG) of the Peace Corps which have been compiled for law enforcement, audit, and investigative functions and/or any other purpose authorized under the IG Act of 1978, as amended.

\* \* \* \* \*

(k) *Requester category* means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication, including commercial requesters; non-commercial scientific or educational institutions or news media requesters, and all other requesters.

\* \* \* \* \*

(n) *Submitter* means any person or entity providing potentially confidential commercial information to an agency, which information may be subject to a FOIA request. The term submitter includes, but is not limited to, individuals, corporations, state governments, and foreign governments.

\* \* \* \* \*

3. Revise § 303.3 to read as follows:



### **§ 303.3 Policy.**

The Peace Corps will make its records concerning its operations, activities, and business available to the public consistent with the requirements of the FOIA. As a matter of policy, the Peace Corps makes discretionary disclosures of records or information that may be exempt from disclosure under the FOIA whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption, but this policy does not create any right enforceable in court.

4. Amend § 303.5 by:

- a. Revising paragraphs (a), (b) introductory text, and (d); and
- b. Removing paragraph (e).

The revisions read as follows:

### **§ 303.5 Public reading room.**

(a) The Peace Corps maintains a public reading room at its headquarters at 1111 20th Street, NW, Washington D.C. 20526. This room is supervised and is open to the public during Peace Corps' regular business hours for inspecting and copying records described in paragraph (b) of this section.

(b) Subject to the limitation stated in paragraph (c) of this section, the Peace Corps makes the following records available in the public reading room:

\* \* \* \* \*

(d) *Electronic reading room.* Records required by the FOIA to be maintained and made available in the public reading room created by the Peace Corps on or after November 1, 1996, are made available electronically on the Peace Corps website at <http://www.peacecorps.gov>.

5. Revise § 303.6 to read as follows:

**§ 303.6 Procedures for use of public reading room.**

Any member of the public may inspect or copy records described in § 303.5(b) in the public reading room during regular business hours. Because it will sometimes be impossible to produce records or copies of records on short notice, a person who wishes to inspect or copy records shall arrange a time in advance, by telephone or letter request made to the Peace Corps FOIA Officer. Persons submitting a request by telephone for a record in the public reading room will be notified whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Written requests should identify the records sought in the manner described in § 303.8(b) and should request a specific date for inspecting the records. The requester will be advised as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

6. Amend § 303.8 by revising paragraphs (a), (b), (c), (h)(1), and (l)(1)(iv) to read as follows:

**§303.8 Requests for records.**

(a) Except for records required by the FOIA to be published in the Federal Register or to be made available in the public reading room, the Peace Corps will make its records promptly available, upon request, to any person in accordance with this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA.

(b) *Requests.* Requests for records under this section shall be made in writing via regular mail, e-mail, facsimile, or online web portal and, as applicable, the envelope and the letter or other form of request should be clearly marked "Freedom of Information Request." All requests shall be addressed to the FOIA Officer. Requests by letter shall use the address given in §303.5(a).

Requests by e-mail must be sent to the FOIA electronic mailbox, [foia@peacecorps.gov](mailto:foia@peacecorps.gov).

Regarding requests submitted via online web portal (accessible on the agency website, [www.peacecorps.gov](http://www.peacecorps.gov)), requesters shall fill in all of the fields as required. Any request not marked and addressed as specified in this paragraph will be so marked by Peace Corps personnel as soon as the request is properly identified. The request will be forwarded immediately to the FOIA Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set out in paragraph (h) of this section until it has been received by the FOIA Officer. Upon receipt of an improperly addressed request, the FOIA Officer shall notify the requester of the date on which the time period began. Requests by letter shall be stamped "received" on the date received by the FOIA Office. Requests by email shall be "received" on the date the email arrived, if a business day, or on the next business day. Requests by online web portal will be entered automatically in the FOIA tracking system. Requests sent via mail or email will be entered manually in the FOIA tracking system. Requesters may utilize the online web portal for purpose of checking status of requests (open/closed) for requests from all sources.

(c) A request must reasonably describe the records requested so that employees of the Peace Corps who are familiar with the subject area of the request are able, with a reasonable amount of effort, to determine which particular records are within the scope of the request. If it is determined that a request does not reasonably describe the records sought, the requester shall be so informed and provided an opportunity to confer with Peace Corps personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requester and the requirements of this paragraph (c). If the Agency cannot identify the requested records after a 2

hour search, it may determine that the records were not adequately described and ask the requester to provide a more specific request.

\* \* \* \* \*

(h) *Initial response/delays.* (1) The FOIA Officer, upon request for any records made in accordance with this section, except in the case of a request for OIG records, shall assign a tracking number to each individual request and send an acknowledgement letter or email to each requester. The acknowledgement letter or email will inform the requester of the assigned tracking number. The FOIA Officer will make an initial determination of whether to comply with or deny such request and dispatch such determination to the requester within 20 business days after receipt of such request. Peace Corps will acknowledge all FOIA requests within 20 working days, except for unusual circumstances, in which case the time limit may be extended for up to 10 business days by written notice to the requester setting forth the reasons for such extension and the date on which a determination is expected to be dispatched.

\* \* \* \* \*

(1) \* \* \*

(1) \* \* \*

(iv) A matter of widespread and exceptional media interest in which there exist possible questions about the Peace Corps' or the Federal government's integrity which affect public confidence.

\* \* \* \* \*

6. Amend § 303.9 by adding paragraphs (a)(8) and (9) and revising paragraph (b) to read as follows:

**§ 303.9 Exemptions for withholding records.**

(a) \* \* \*

(8) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; or

(9) Geological and geophysical information and data, including maps, concerning wells.

(b) In the event that one or more of the above exemptions in paragraph (a) of this section apply, any reasonably segregable portion of a record shall be provided to the requester after deletion of the portions that are exempt. The Peace Corps shall indicate, if technically feasible, the precise amount of information deleted and the exemption under which the deletion is made at the place in the record where the deletion is made, and indicate the exemption under which a deletion is made on the released portion of the record, unless including that indication would harm an interest protected by the exemption. At the discretion of the Peace Corps officials authorized to grant or deny a request for records, it may be possible to provide a requester with:

(1) A summary of information in the exempt portion of a record; or

(2) An oral description of the exempt portion of a record.

\* \* \* \* \*

7. Amend § 303.10 by revising paragraphs (a), (c)(1)(i) and (ii), (c)(2)(ii), and (c)(3) to read as follows:

**§ 303.10 Responsibilities and authorities.**

(a) *Legal counsel.* The General Counsel (GC) shall furnish legal advice to Peace Corps officials and staff as to their obligations under this part and shall take such other actions as may be

necessary or appropriate to assure a consistent and equitable application of the provisions of this part by and within the Peace Corps. The OIG Legal Counsel will coordinate with GC, as appropriate and necessary, when furnishing legal advice to the OIG FOIA Officer and Inspector General.

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) Consult with the other agency before responding to the request; or

(ii) Refer the responsibility for responding to the request for the record to the other agency (but only if the agency is subject to FOIA). Ordinarily, the agency that originated a record will be presumed to be best able to determine whether to disclose it.

(2) \* \* \*

(ii) Whenever a request is made for a record containing information that has been classified by another agency or may be appropriate for classification under Executive Order 13525 or any other executive order concerning the classification of records, the Peace Corps shall refer the responsibility for responding to the request regarding that information to the agency that classified the information, should consider the information for classification, or has the primary interest in the information, as appropriate.

(3) *Notice of referral.* Whenever the Peace Corps refers all or any part of the responsibility for responding to a request to another agency, it ordinarily shall notify the requester of the referral and inform the requester of the name of the agency to which the request has been referred and

the part of the request that has been referred and provide the requester with a point of contact within the receiving agency to whom the requester can speak regarding the referral.

\* \* \* \* \*

8. Amend § 303.12 by:

- a. Revising paragraph (a);
- b. Redesignating paragraph (b) as paragraph (c); and
- c. Adding new paragraph (b).

The addition read as follows.

**§ 303.12 Appeals.**

\* \* \* \* \*

(a) Any person whose written request has been denied is entitled to appeal the denial within 30 business days by writing to the Associate Director of the Office of Management or, in the case of a denial of a request for OIG Records, the Inspector General, at the address given in 303.5(a). An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued. If the appeal is sent via mail, the envelope and the letter should be clearly marked "Freedom of Information Appeal" and the appeal shall be addressed to the Associate Director, Office of Management. Appeals by letter shall use the address given in §303.5(a). Appeals are accepted via email. Appeals by e-mail must be sent to the FOIA electronic mailbox, [foia@peacecorps.gov](mailto:foia@peacecorps.gov). In appeals submitted via online web portal (accessible on the agency website, [www.peacecorps.gov](http://www.peacecorps.gov)), requesters shall fill in all of the fields as required. Appeals by online web portal will be entered automatically in the FOIA tracking

system. Persons submitting an appeal may utilize the online web portal for purpose of checking status of requests (open/closed) for requests from all sources.

(b) A response to an appeal will advise the requester that the 2007 FOIA amendments created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways:

Office of Government Information Services  
National Archives and Records Administration  
8601 Adelphi Road—OGIS  
College Park, MD 20740  
ogis.archives.gov  
E-mail: ogis@nara.gov  
Telephone: 202-741-5770  
Facsimile: 202-741-5769  
Toll-free: 1-877-684-6448

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9. Amend § 303.13 by revising paragraph (b) to read as follows:

**§ 303.13 Fees.**

\* \* \* \* \*

(b) For each commercial use request, fees will be limited to reasonable standard charges for document search, review, and duplication.

\* \* \* \* \*

10. Amend § 303.14 by revising paragraphs (a)(5)(i) and (ii) to read as follows:

**§ 303.14 Procedures for responding to a subpoena.**

(a) \* \* \*



(5) \* \* \*

(i) Congressional requests or subpoenas for testimony or documents;

(ii) Employees or former employees making appearances solely in their private capacity in legal or administrative proceedings that do not relate to the Agency (such as cases arising out of traffic accidents or domestic relations). Any question regarding whether the appearance relates solely to the employee's or former employee's private capacity should be referred to the Office of the General Counsel.

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Dated: March 25, 2014.

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Garry W. Stanberry, Deputy Associate Director, Management.

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